IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 269 OF 2005

Mushtaq Moosa Tarani .. Petitioner

V/s

Government of India & Ors. .. Respondents

Mr.P.A. Sebastian i/b Mr.Shahid Azmi and Ms.Renuka Bhat for the Petitioner.

Ms. S.I. Shah with Mr. Y.R. Mishra for Respondents No.1 and 2.

Mr.Aspi Chinoy, Senior Advocate, with Mr. Mihir Desai for Respondents Nos.3 and 6.

Dr.Rajiv Dhawan, Senior Advocate, with Mr. Nikhil Nayar and Mr.Prashant Vyankatesh i/b Mr.Mihir Desai for Respondents Nos.4 and 5.

Mr.V.A. Thorat, Advocate General with Mr.R.M. Sawant, Government Pleader, for the Intervener - State of Maharashtra.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE OF RESERVING THE JUDGMENT : 28TH FEBRUARY 2005

DATE OF PRONOUNCING THE JUDGMENT : 31ST MARCH 2005

JUDGMENT: (Per Gokhale J.)

1. On Friday, 12th March 1993, a series of bomb explosions occurred in the city of Mumbai within two hours, i.e. between 1.30 p.m. and 3.30 p.m. The bomb blasts took place in different parts of city starting from Stock Exchange situated in South Mumbai to the Centaur Hotel, Juhu in North Mumbai. More than 250

persons were killed or were missing as a result thereof and more than 700 got injured. A large number of properties were damaged. The bomb blasts were said to be engineered by one Ibrahim Memon also called as Tiger Memon, who is alleged to be a person with anti-social background. These bomb blasts were claimed to be by way of a retaliation to the demolition of the Babri Masjid-Ram Janmabhoomi structure at Ayodhya on 6th December 1992 and the riots which took place thereafter in Mumbai between 6th to 12th December 1992 and thereafter from 7th to 16th January 1993 wherein some 900 people died, nearly 2/3rd of whom were stated to be Muslims. Thousands of people were injured and the loss to various properties was incalculable.

2. The search into these bomb blasts led to the arrest and prosecution of a large number of persons. Some 189 persons are said to be prosecuted under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) in a case numbered as Bombay Blast Case No. 1 of 1993. Out of these 189 persons, 145 have been arrested and 44 are stated to be absconding. There are more than 3700 witnesses sought to be relied upon by the prosecution. The evidence has now been led, arguments are over and judgment is awaited.

3. A journalist by name S. Hussain Zaidi spent good time on the information concerning these riots and the prosecution resulting therefrom. He interviewed many of the accused and their associates, police officers, prosecutors, defence lawyers and went through the charge-sheet and the records of the case, and in the year 2002 came out with a book named "BLACK FRIDAY". In this book, he is stated to have gone into the heart of the conspiracy and the massive investigation that ensued. The book is stated to be a product of some four years of meticulous research. The book is claimed to be the true story of the Bombay bomb blasts.

4. The Respondents Nos.3 to 6 to this petition (the film-makers) have now made a Hindi Film based on this book. This aspect is very clear from the disclaimer that is shown at the beginning of the film. The disclaimer reads as follows:-

> "The film you are about to see is based on the book "Black Friday" first published in 2002. The events depicted in this film are true to the book and are constructed from the case for the prosecution. In the adaptation to film certain creative license has been taken. Nothing in this narration should be construed to be an

opinion on the innocence or guilt of the persons depicted."

This film is not a documentary film. A documentary contains the visuals of actual events and real persons, but no story. This film is claimed to be a docudrama. It claims to unfold a story which is based on real events. It is not fictional. The characters are portraits of real persons carrying their very names and attempting to resemble them completely. They are clearly identifiable.

5. The Petitioner is accused No.44 in this trial and he has been in custody all throughout. He is awaiting the judgment. He came to know about this film from the advertisement in newspapers that it is based on a book which claims to be a true story of the Bombay bomb blasts. He bought the book and went through it only to realise that it is produced with the assistance of lawyers and support of the judge in charge of the case. The Petitioner fears that the effect of the film based on such a book will be to vitiate a fair trial and decision, and will have a damaging effect on the impartiality of the administration of justice which is a minimum expectation of an accused. In his view, the film constitutes an interference in the administration

of justice, it scandalises the court and, therefore, it is in contempt of court. His second submission is that this film defames him by showing him as a criminal, it affects his reputation and may even endanger security of his life. He along with 31 undertrial prisoners in this case had moved a Misc. Application in the TADA Court after which the words "True Story" have been deleted from the title of the film. He has filed this petition to challenge the legality, validity and propriety of the grant of certification to the said film by Respondent No.2 - Central Board of Film Certification (CBFC for short). He prays that an appropriate order be passed which will suspend the circulation and screening of the film till the judgment is delivered. He has also prayed for appropriate interim injunction. With respect to the submission with respect to security of life, he has affirmed a further affidavit on 10th February 2005 and placed on record the names of seven accused who were killed while on bail and list of nine accused on whom an attempt to murder was made.

6. With respect to Petitioner’s first contention concerning a fair trial and contempt of court, the defence of the Respondents Nos.3 to 6 has been that the evidence and arguments in the trial are over, the film has been based on the prosecution story and the release

of it is not something which can affect a judicially trained mind. This is not a trial by the jury. The learned judge has to decide the matter on the evidence led before him and hence there is no likelihood of any effect on administration of justice nor can it constitute any comment on the pending proceedings so as to constitute contempt of court. The Petitioner must show clear and imminent prejudice to his defence, otherwise free speech and artistic expression should not be curbed on the ground of alleged contempt. As far as the second grievance with respect to defamation is concerned, it is stated that these are all facts culled out from public domain and known to the world at large. Therefore, neither defamation can be pleaded nor any injunction sought. The necessary certificate under the statute has been given by the competent authority. Prior thereto, a disclaimer has been given, as mentioned earlier, that nothing in the narration be construed as an opinion on the guilt of the persons depicted. Thereafter the second balancing act has been done in TADA Court by deleting the words "True Story". The film makers are ready to give a further disclaimer as the third balancing act for the protection of the defence as well as prosecution, if required. There should not be any interference in the freedom of artistic expression which is otherwise guaranteed under Article 19 of the

Constitution of India on the ground of defamation as well. It is a matter of balancing the competing claims for a free trial as against free speech and expression and the film makers are ready for an appropriate balancing act short of suspension of screening of the film.

7. The petition was moved for urgent interim orders and was heard after notice to the Respondents. After hearing counsel for both the parties, an ad-interim order was passed restraining the release of the film on 27th January 2005. An S.L.P. was filed thereagainst, but the same was dismissed by the Apex Court by observing that the S.L.P. was not being entertained since it was against an interlocutory order and the matter was to be reconsidered thereafter by the High Court. The film was not seen by this Court at that time. Only the book "Black Friday" was made available. The film was viewed thereafter. Affidavit in reply has been filed by Respondents Nos.3 to 6, 1 & 2 and then a rejoinder by the Petitioner. State of Maharashtra through Commissioner of Police, Mumbai has moved a chamber summons to join in this matter as a Respondent to point out that the film causes prejudice to the prosecution as well. By an order passed on 15th February 2005, we have allowed the State to join, but

only as intervener and not as Respondent. The affidavit in support of the chamber summons by State of Maharashtra is treated as their affidavit explaining their stand with respect to this writ petition. On the request of the counsel for all the parties, the petition is heard finally at the admission stage. Rule is therefore issued and made returnable forthwith. The counsel for the parties have made their submissions and they are heard at length.

8. Before we proceed to deal with the contents of the film and the submissions on facts and law in detail, it would be desirable to refer to basic statutory provisions. The Petitioner is claiming his right under Article 21 of the Constitution which declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Right to personal liberty includes the right to fair trial and which has to be without any outside influences. He has invoked Article 14 also which guarantees equality before law and equal protection of laws. It is contended that though Article 19(1)(a) secures freedom of speech and expression, it is subject to the restrictions contained in Sub-Article (2) thereof which include restrictions on the ground of contempt of court and defamation. As against that, protection of

life and personal liberty as enshrined in Article 21 has been placed on a higher pedestal after 44th Amendment to the Constitution and even in the Emergency provisions under Article 359 sub-article (1)(a), it has now been provided that whereas the fundamental rights conferred by Part III of the Constitution could be suspended during emergency, Articles 20 and 21 are excluded from this suspension.

9. Article 19(2) reads as follows:-

> "**19. Protection of certain rights regarding freedom of speech, etc.** (1) All citizens shall have the right -
>
> (a) to freedom of speech and expression;
> (b) ....
> (g) ....
>
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security

> of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

The same provisions are reflected in clause (1) of section 5B of the Cinematograph Act, 1952, which provides as follows:-

> "**5B. Principles for guidance in certifying films**.- (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence."

10. As far as the submission with respect to contempt is concerned, we will have to refer to the definition of "criminal contempt" as found in section 2(c) of the Contempt of Courts Act, 1971 which reads as follows:-

> "**Criminal contempt** means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
>
> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner."

11. As stated earlier, the film is based on the book "Black Friday". The book begins with the Acknowledgments. Thereafter there is an Author’s note and then Maps giving the bomb sites. Then there is a Prologue whereafter the Chapters in the book start. There are in all 17 chapters with the following captions:-

> 1) The Beginning, 2) The Conspiracy, 3) The Preparations, 4) The Final Plan, 5) The Worst Day, 6) The Days After, 7) On the Run, 8) The Investigation Continues, 9) Enter Bollywood, 10) Prize Catches, 11) The Other Teams, 12) The Trial Begins, 13) Yaqub Memon, 14) The Helping Hand, 15) The Case Continues, 16) Retaliation, 17) Life after Death.

These chapters are followed by an Epilogue, then the Sources and an Appendix. As far as the Acknowledgments at the beginning of the book are concerned, we have already made a reference to the same. In the Author's Note, it has been specifically stated as follows:

> "Much of the story is culled from the case presented by the prosecution in the trial as the prime sources of information are the chargesheet in the case filed by the police and the statements of the accused."

In the Sources mentioned at the end of the book, it is stated that the details of most of the incidents have been collected from the confessional statements of the accused or information through their depositions in the

court. Then it is stated later on that with respect to the details of the legal proceedings, the author was helped by the presiding judge and the defence advocates whose names are mentioned. It is also stated that the author was assisted by the members of CBI, Special Task Force especially one Raman Tyagi and media reports.

12. As far as the film is concerned, apart from viewing it, we also went through its script in Hindi with English translation, both of which were made available by the film makers. The film begins with the Disclaimer reproduced earlier. Thereafter a quotation from Mahatma Gandhi is printed, namely that "Eye for Eye makes the whole world blind". Then the film begins with a scene from Navpada Police Station where one Gullu is being interrogated by a police officer three days before the bomb blasts. During the interrogation, he discloses that the city is going to be bombed including at Sena Bhavan, Chief Minister’s office, Stock Exchange, etc. Then a city street is shown in the night and then the lit up durgah at Mahim. One Badshah Khan is then shown on a scooter. Thereafter there is a scene where some 20 men are shown around one Tiger Memon who tells them that Gullu has defected, but that is not going to stop them on Friday, the 12th, which is the 17th day of Ramzan, the day on which the Prophet fought the holy war and

won, i.e. the day when they had to act.

13. Thereafter the city is shown three days' later, the traffic at the Churchgate Railway Station and then the bomb blasts at the Stock Exchange at about 1.30 p.m. when people were coming out during lunch time. Then the tragic sequences follow. First, the bomb blast at Passport Office and Century Bazar are shown. One red coloured Maruti van is found left near Century Bazar. The RC Book of the vehicle is found by the police in the name of one Rubina Memon of Mahim. Then there are scenes on the basis of this information showing the search carried out at Mahim by Police Officers Mr.Rakesh Maria and Mr.Dangle. Thereafter finding of an unclaimed parked scooter at Naigaum and which is found to be that of one Asgar Mukadam leading to his arrest. Thereafter the film proceeds as divided in various chapters. The headings of the chapters are not exactly corresponding to the chapters in the book. They are as follows:-

> 1) The first arrest, 2) Arrest and interrogation March - April 1993, 3) On the run, 4) Yeda (Yakub) Khan and RDX, 5) The conspiracy - I. Planning, II. Training, III. Yaqub Memon and Dawood Ibrahim, IV. What is past is prologue.

The first chapter in the film is thus for example on the first arrest which shows the arrest of above mentioned Asgar Mukadam. This Mukadam tells the story as to how the bomb blasts were planned. Thus one Mohammed Iqbal, who is an accused, is shown taking a scooter with RDX to a place in Naigaum. Then the Petitioner, Mushtaq Tarani, is shown going to Centaur Hotel at Juhu and planting a bomb. Farooq Pawale and Badshah Khan are shown parking a car at Lucky Petrol Pump near Sena Bhavan at Shivaji Park. Again Tarani (the petitioner) is shown going to Zaveri Bazar and leaving a scooter with RDX there. Thereafter a scene of throwing a bomb in Machimar Colony at Mahim.

14. Thereafter comes the second chapter of the film which is on arrest and investigation which is corresponding to Chapter 8 of the book. Arrest of various accused such as one Parvez and Imtiaz Ghavate is shown. Chapter 3 of the film is entitled "On the run", where the story of one Badshah Khan, who later-on becomes an approver, is disclosed. This chapter ends with the arrest of Badshah Khan at Rampur and his statement to the police followed by the interval.

15. After the interval, Chapter 4 of the film begins which is on one Yeda Yaqub and RDX. This chapter shows

the arrest of the relatives of one Yeda Yaqub and their ill-treatment by the police under Inspector Dangle. Then the questioning of the Investigating Officer Shri Rakesh Maria by the Press is shown wherein he states that may be there are some human rights abuses, but the executors of the bomb blasts are worse. Yeda Yaqub is shown as being in touch with one police officer Shri Arup Patnaik and imploring him to release his relatives in turn for which he will give some relevant information. The conversation of Yeda Yaqub with Arup Patnaik leads to the recovery of RDX at Nagla Bunder in District Raigad. Thereafter the chapter shows the arrest of one Khurana for tracing one Pilu Khan. When Khurana is at the police station, he sees the ill-treatment of a few ladies by policemen. On being granted bail, he goes home and kills his wife, daughter and commits suicide. This is followed by a statement of Police Commissioner Mr.Samra who tells that Khurana was never in the custody of police.

16. Then comes Chapter 5 which is on the "Conspiracy". It shows the planning as disclosed in the confession of Badshah Khan. It shows how one Javed Chikna received an injury during the riots after the demolition of Babri Masjid, and he being taken to National Hospital, Mahim. Then this Javed Chikna

meeting with one Dawood Phanse at Hotel Big Splash at Alibag, Tiger Memon imploring Dawood Phanse to help in landing RDX, Phanse wishing to meet Dawood Ibrahim himself and his meeting with Dawood Ibrahim in Dubai.

17. Thereafter comes the second part of this Chapter 5 which is on "Training". This is corresponding to chapter of Preparation in the book. This shows Dawood Phanse linking with the officers of Excise and Customs at Village Shekadi, a coastal village, followed by unloading of RDX and AK-56 rifles. Then it is shown that Badshah Khan and some others go to Dubai and to Islamabad. Gullu is shown joining them at Islamabad. Then the training of operating detonators and explosives followed by a meeting at Dubai where an oath is given by Tiger Memon by placing hands on Quran. Thereafter the return of all the persons concerned to Mumbai, a visit to the Head Office of Municipal Corporation and plan to blast it followed by the arrest of Gullu which is shown at the beginning of the film. Then a statement of Mr.Samra, Police Commissioner that on 4th November 1993 the charge-sheet had been filed and a leading lawyer (whose name is mentioned) is appointed as the Prosecutor. Then comes Part III of this chapter which is on Yaqub Memon, a relative of Tiger Memon and Dawood Ibrahim. It is shown as to how Tiger Memon’s property

was destroyed in the post Ayodhya Riots and how relatives of Dawood Ibrahim suffered and their sending him bangles in a sealed cover, and Dawood talking to a leading lawyer who is also in politics to find out a way. The film ends with the shots of Babri Masjid demolition, riots and bomb blasts and again the earlier quoted sentence of Gandhiji.

18. As far as the Petitioner himself is concerned, he is shown planting a bomb at the Juhu Centaur Hotel in a suitcase (pages 23 and 24 of the English Script) and at the Zaveri Bazar in a scooter (page 29 of the English Script). Then he is shown driving a car wherein various participants in the bomb blasts are going from place to place and ultimately throwing the detonator somewhere near Prabhadevi, vacating the car and the Petitioner being asked to leave the car forthwith (pages 30 and 31 of the English Script). Thereafter it is shown that the participants in the conspiracy are having a connection with Pakistan (pages 93 to 97 of the English Script). This is also seen in the conversation in Dubai wherein Tiger Memon, a person claiming to be of ISI, and the participants in the conspiracy are discussing the plans for retaliation after the demolition of Babri Masjid. After the episode concerning the ill-treatment of the relatives of Yeda Yaqub, Shri Maria is asked questions

by members of Press and while defending the action, he states that sometimes some innocents are arrested along with ten such criminals. Nobody is perfect in the world. These people feel that what they have done is absolutely right, they are jehadis, they are terrorists and extremists. Forget third degrees, even if their fingers are cut, they will not open their mouth until they are dishonoured.

19. In paragraphs 4, 6, 8, 9, 11, 12 and 15 (vii) of this petition, it is submitted that the fact that the author of the book has given "special thanks" to the judge for the support given by him, the fact that he claims it to be the true story with real characters and incidents (para 4) and the fact that the film also claims to be true to the book (with certain creative licence) may scandalise or tend to scandalise or lower or tend to lower the authority of court (para 9). The judge must not be impartial but also be seen to be impartial (para 6). The acknowledgment in the book shows that the judge had pre-decided the case and his mind was not open and unbiased (para 8). The things which lower the prestige and authority amount to contempt of court as defined in section 2(c) of the Contempt of Courts Act (para 11). Viewers will form an opinion lowering the authority and prestige of court

(para 12). The screening of the film will affect the appearance of TADA Court as an impartial judicial institute and undermine the confidence of people in Indian Judicial System (para 15(vii)). In para 13 of the petition, it is contended that the accused is presumed to be innocent until found guilty by a competent court and no competent court has found them to be guilty so far. The release of the film will defame the Petitioner and the other accused.

20. On behalf of film makers, it was submitted that there must be a clear and present danger that free speech will produce a substantial evil and then only the State will exercise power to prevent it. There must be present or imminent danger and the evil to be prevented must be a serious one. Reliance was placed on the dicta of Justice Brandeis of the American Supreme Court in **Whitney v. California - (1927) 274 US 357**. However, as far as Indian Law is concerned, the question with respect to the validity and legality of censorship has been squarely considered by the Apex Court in **K.A. Abbas v. Union of India - (1970) 2 SCC 780**. A Constitution Bench of the Apex Court (per Hidayatullah, CJ.) specifically held that censorship and pre-censorship also has full justification in the exhibition of cinema films in India. In para 41 of that

judgment, the Court held as follows:-

> "With this preliminary discussion we say that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films. We need not generalize about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interests of society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution."

21. That was a case concerning a documentary film called "A Tale of Four Cities" made by Mr.Abbas, a reputed film maker. While deciding the question as to whether pre-censorship by itself offends the freedom of speech and expression, in that matter, which was the first one, wherein the censorship in general and pre-censorship in particular were challenged, the Apex

Court noted that censorship is prevalent all the world over in some form or other and pre-censorship also plays a part where motion pictures are involved (para 19). While discussing the role of films when compared with other forms of art and expression, the Court observed in para 20 as follows:-

> "Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photography, vistavision and three-dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women."

In para 21 of the judgment, the Court referred to the dicta of Justice Brandeis by specifically referring to the propositions in Whitney v. California. It referred to the leading judgment of Justice Douglas in **Kingsley International Pictures Corpn. v. Regents - (1959) 360 US 684** concerning the film Lady Chatterley's Lover. Then it referred to the cases from England and finally observed in para 39 as follows:-

> "It, therefore, follows that the American and the British precedents cannot be decisive and certainly not the minority view by some of the judges of the Supreme Court of the former. The American Constitution stated the guarantee in absolute terms without any qualification. The judges try to give full effect to the guarantee by every argument they can validly use. But the strongest proponent of the freedom (Justice Douglas) himself recognised in the Kingsley case that there must be a vital difference in approach. This is what he said:
>
> > "If we had a provision in our Constitution for 'reasonable' regulation of the press such as India has included in hers, there would be room for

> argument that censorship in the interests of morality would be permissible."

> In spite of the absence of such a provision Judges in America have tried to read the words 'reasonable restrictions' into the First Amendment and thus to make the rights it grants subject to reasonable regulation. The American cases in their majority opinions, therefore, clearly support a case of censorship."

22. Thus, as observed by the Apex Court, in the Indian Law where there are reasonable restrictions permitted under the Constitution itself, the only question to be determined is whether the decision of the Censor Board is justified in a particular case or not and if some other person, such as the Petitioner herein, is aggrieved by the contents of a film, can he not contend that an appropriate restriction was necessary? In the instant case, he relies upon two restrictions, namely contempt of court and defamation. The question, therefore, to be examined is whether the film would vitiate the fair trial and release thereof before the pronouncement of judgment will amount to contempt of court and secondly whether it defames the Petitioner

thereby justifying his plea for injunction until the judgment in the trial.

23. Now we come to the first question as to whether the film affects a fair trial and release thereof would amount to contempt of court. We have noted the contentions raised in the petition earlier. Mr.Sebastian, learned counsel appearing for the Petitioner, submitted that the Petitioner claims to be innocent and he should be deemed to be innocent until the trial holds him guilty. The Petitioner has been shown in the film as planting a bomb at Centaur Hotel at Juhu. Besides, Mr.Maria, the Police Officer in-charge, has specifically called him and others involved as jehadis, ISI agents and terrorists. Apart from defamation, in view of the fact that the entire story in the film is on the strength of a well researched book has got to be noted. The book clearly acknowledges the support of the learned Judge and of various lawyers involved in the case and the prosecution material. It is true that the evidence and the arguments are over, but, at the same time, the fact remains that even before the verdict is out, the film is depicting the Petitioner as a criminal. Is it not a description or a comment which will have an impact on the decision? The film is a powerful media. In the event the Petitioner is

released after this depiction, will it not lead to the comments on the judge? Will this not be a factor which may weigh on the mind of the judge? Does it not thereby lower the authority of the court and interfere with the due course of judicial procedure? Does it not in any case obstruct the administration of justice in the wider sense?

24. Mr.Sebastian referred to a judgment in the case of **R v. Evening Standard Co. Ltd. - 1954 (1) All England Law Reports 1026**. In that matter, a Reporter of an evening newspaper gave an erroneous report of the evidence of a criminal trial. The court held the newspaper guilty of contempt. Lord Goddard, CJ., who delivered the judgment of the court, quoted with approval the observations of Lord Hardwicke, L.C. in St. James Evening's case reported in (1742) 2 Atk. 469, which were to the following effect:-

> "Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard."

It was further observed in the said judgment as follows:-

> "There may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

Mr.Sebastian submits that the present case is a fit case where prejudice is sought to be spread against the Petitioner and the other accused before the cause is finally decided.

25. He then referred to the judgment of a Division Bench of Calcutta High Court in the case of **Bankim Chandra Paira and Another v. Anand Bazar Patrika and Another - AIR 1950 Calcutta 129**. That was a case where the Petitioner and another person were under-trial prisoners in a case under sections 148, 342, 353 and 307 of Penal Code. A news had appeared in the respondent newspaper and another newspaper that communists had looted away about 70 mounds of paddy in a village within

the police station of Narayangarh (Midnapore) at the relevant time. It was further stated that it was desirable that the bail bonds of the accused should be cancelled till their trial is finished or arrangement made for providing police guard. The Petitioners sent by post an application addressed to the Registrar of the High Court drawing attention to the aforesaid publication and that it related to matter which was awaiting decision in the court wherein they were accused. Notices were issued to the two newspapers for interfering with the course of justice and for contempt. It was sought to be contended on behalf of the newspapers that the information in the newspaper was too vague. That submission was repelled by the court by observing that the description leaves no doubt as to the cause to which it relates. The Division Bench observed at the end of para 8 as under:-

> "What is punishable under the law is comment on a cause while it is pending actually prejudicing or calculated to prejudice any party. If the party is named it adds to the gravity of the offence but the naming of the party is not an essential ingredient."

In para 13, the Division Bench observed that the

description of the accused as communists is certainly a matter of great prejudice in the political atmosphere of the country at that time. In para 14, it quoted with approval the observation of Sir Arthur Harries, Chief Justice of the Lahore High Court, **in the matter of Tribune reported in AIR 1943 Lahore 329**, which was to the following effect:-

> "Any publication which is calculated to poison the minds of the jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt."

The court held the newspapers guilty of contempt.

26. Another judgment relied upon by Mr.Sebastian was a Division Bench judgment of Madhya Pradesh High Court in the case of **Smt. Padmawati Devi v. R.K. Karanjia - AIR 1963 Madhya Pradesh 61**. Two persons were undergoing a trial in Jabalpur in the matter arising out of suicide committed by one Kum. Usha Bhargava. This suicide had led to communal riots. An article was printed by the respondents in English newspaper "Blitz" under the caption "Who set communal fires ablaze in Jabalpur?" Some other picture of the case was sought to be given in

that article wherein innuendo was that Kum. Bhargava and the accused were all persons of bad character. There were various other comments on the prosecution case and the witnesses. In para 12, the Division Bench observed as follows:-

> "12. In these proceedings, we are not concerned with the truth or falsity of the various allegations and innuendoes. We have only to consider whether they were intended or calculated to prejudice a fair trial, and in our opinion, apart from intent, anything more calculated to prejudice a fair trial could not have been written and published. To cast serious aspersions on the character of Kum.Bhargava, who was dead and on whose statement the fate of the criminal prosecution depended, and on the character of the accused who may have to face a criminal trial involving their life and liberty, cannot be justified on any ground. Nor can an attempt to malign a prospective witness - the lone neighbour who claimed to have seen the accused nearabout the house of Usha Bhargava on 3-2-1961 - by ridiculing him for being the only person to have seen the accused on that day when others who are

> alleged to have been equally in a position to do so had not so seen them, and further by imputing motives to him by labelling his statement as being the result of communal feeling be defended on any reasonable basis."

In para 25 of the report, the court referred with approval to the above referred judgment in the case of **St. James's Evening Post case**, and in para 36 observed that the court was not concerned with the bonafides of the writers, but if the offending publication is calculated or has the tendency to interfere with the course of justice, its writer and publisher cannot escape liability. In para 33 and 34, the Division bench observed as follows:-

> "33. In our opinion, both on principle and authority we ought not to import the concept of mens rea in criminal contempts as thereby the whole purpose of the law of contempt would be materially defeated. It is a cardinal principle of criminal law that not only should justice be done but that it should be seen to be done; and if the publication in newspapers of such articles directly or indirectly undermines the confidence of the people in the administration

of justice, in our opinion, it should be strongly discountenanced.

34. In the words of Lawrence, C.J. in People v. Wilson, (1872) 16 Am Rep. 528.-

"A Court will, of course, endeavour to remain wholly uninfluenced by publications like that under consideration; but will the community believe that it is able to do so? Can it even be certain in regard to itself? Can men always be sure of their mental poise? A timid man might be influenced to yield, while a combative man would be driven in the opposite direction. Whether the actual influence is on one side or the other, so far as it is felt at all, it becomes dangerous to the administration of justice. Even if a Court is happily composed of judges of such firm and equal temper that they remain wholly uninfluenced in either direction, nevertheless a disturbing element has been thrown into the council chamber, which is the wise policy of law to exclude."

27. Mr.Sebastian relied upon another judgment in the case of **Wasudeoraoji Sheorey v. A.D. Mani, Managing**

Editor, Hitavada - AIR 1951 Nagpur 26. A Division Bench of the Nagpur High Court was concerned with respect to three writings in the publication "Hitavada" since they had a tendency to prejudice the trial wherein the Petitioner was involved. While discussing the right of a newspaper even to publish a faithful account of a proceeding before a Court of Law, the Division Bench held that the same is subject to the condition that the publication does not tend to prejudice materially the fair trial of a case before a Court of Law. Mudholkar J. (as he then was in that Court), while writing for the Division Bench, quoted with approval the observation of Lord Hardwicke from St. James Evening's case reproduced earlier. Mr.Sebastian, therefore, submitted that the law in this behalf is clear and there is no reason to depart therefrom inasmuch as it will affect the fair trial of the Petitioner.

28. The prayers in the petition received a support from an unexpected quarter, i.e. the State of Maharashtra through the Commissioner of Police, Mumbai, though for altogether different reasons. As stated earlier, the State of Maharashtra moved a chamber summons to join in this matter as party Respondent. On 15th February 2005, we allowed that chamber summons in part in the sense that we allowed the State to join in

the proceedings though as an intervener only and not as a party. An affidavit in support was filed by one Shri Shivaji Bodkhe, Deputy Commissioner of Police, Special Branch-I. In the affidavit, it is stated that the Joint Commissioner of Police, Law and Order addressed a letter dated 9th June 2004 to the Regional Officer, CBFC requesting him that keeping in view the sensitivity of the subject matter of the film, the views of the Police Department may be taken into consideration prior to the Censor Clearance Certificate. The Regional Officer, CBFC by his letter dated 10th June 2004 wrote back that one of the Police Officers will be included when the film is previewed by the Examining Committee prior to the certification of the film. The preview was fixed on 1st September 2004 which was also informed to the Deputy Commissioner of Police by a letter of CBFC dated 30th August 2004. This was felt to be a short notice and, therefore, the police informed that it would not be possible for them to attend at such a short notice. CBFC carried out the preview and also passed the film with "A" Certificate on 23rd September 2004.

29. It was further stated in that affidavit that by a further letter dated 21st September 2004, the D.C.P., (Operations) wrote to CBFC that a review of the decision may be taken after taking the views of the Police

Department. CBFC again arranged the screening of the film on 23rd November 2004 when the Additional Commissioner of Police, Special Branch Shri Bipin Bihari, DCP, Special Branch-II Shri Deven Bharti and DCP Special Branch-I Shri S.T. Bodhke viewed the screening. They had learnt before the screening that the film had been passed with "A" Certificate. From the affidavit, it is clear that the Police Department did not say anything thereafter to the authorities of CBFC nor did they place on record any grievance with respect to the film.

30. It is, however, further stated in para 5 of the affidavit that the film depicts the serving and retired police officers in bad light and although there is a Disclaimer at the beginning of the film, the content and tenor of the language used, when seen visually, is extremely provocative. The officers were named by their real names. Two of the accused, i.e. Tiger Memon and Yakub Memon, are shown with ISI Officers speaking against Hindus, which has got the potential of hurting the sentiments of the Hindus. The Investigating Officers and their teams have been shown using filthy and abusive language. Some incidents of assault and ill-treatment of accused persons are also shown in the film and, according to the police, they are not based on

any true incident. It is stated that no such incident ever occurred or were complained against. Two of the incidents are specifically mentioned; one where police officers are shown behaving in a highly objectionable manner with a mother and a daughter in the police station and another while taking thumb impression of an accused (one Imtiaz) when his thumb was severely injured. It is stated that these scenes and some other parts of the film create a negative and anti-Muslim image of the police which will affect the handling of such communal riot and other public order situations adversely in future. In para 6 of this affidavit, it is stated that the release of the film will have the potential of creating a law and order situation on account of the adverse statements made against Muslims and Hindus. Lastly, it is stated in the affidavit that the police are of the opinion that the film requires certain amount of editing so as to cut the visually objectionable parts mentioned therein.

31. The learned Advocate General appearing for the State submitted that the police are seeking to intervene since they have no right of appeal against the certificate of the film. Under sections 5C and 5D of the Cinematograph Act, 1952, an appeal is available to a person applying for a certificate if he is aggrieved by

any order passed by the Board and which appeal lies to the Appellate Tribunal. This position is clarified by the Apex Court in para 10 of its judgment in the case relating to Tele-serial "Tamas" in **Ramesh v. Union of India - (1988) 1 SCC 668**. That being the position, the State had no remedy except to intervene in the present matter for its own reasons as stated above. He submitted that although this is a petition by an accused, the court, while examining his submissions for appropriate restrictions on the ground of defamation and contempt of court, ought to as well examine as to whether the film is likely to incite the commission of any offence. This is an aspect which is to be kept in mind by the certifying authority and which has been specifically so mentioned in the principles of guidance in certifying films laid down in section 5B of the Cinematograph Act. He submitted that a proviso was brought in section 5A of the Act after the judgment in **Raj Kapoor v. Laxman - (1980) 2 SCC 175** to protect the person who has applied for certification, distribution or exhibition so that he shall not be liable for punishment under any law relating to obscenity once the certificate is granted. Thus the certificate has been given finality on the aspect of obscenity whereas there is no such corresponding provision in section 5B. Therefore, there is a room for this Court to move in.

He submitted that once the film is shown as a true story based on a book, it will be seen by a large number of persons who are impressionable. It will create a wrong image of the police. The film names retired and serving officers by name such as Shri Samra, Shri Rakesh Maria, Shri Patnaik and Shri Dangle. The name of the prosecutor is also mentioned. The names of two politicians are mentioned as persons who had to suffer in the bomb blasts. This will affect law and order. In the film, the police are shown as acting against the minority. There are comments against CBI. The Advocate General, therefore, submitted that this was a fit case where this court ought to interfere for the reasons which he has canvassed on behalf of the State Government.

32. The submissions of the Petitioner as well as that of the State Government were countered by Ms.Suvedita Shah appearing for Union Government and CBFC. An affidavit in reply has been filed by one Smt. Vijaya Chawak affirmed on 9th February 2005 to oppose the petition. She is Assistant Regional Officer in CBFC. She has affirmed another affidavit on 15th February 2005 to counter the submission of the State of Maharashtra. In the first affidavit, she has stated that the film makers have accepted the cuts suggested by

the Examining Committee. Therefore, what you now see is (1) 50% reduced visual of Imtiaz being forced to put in his thumb, (2) reduced visuals of policemen misbehaving with women, (3) visuals of persons without limbs (as a result of riot or bomb blast) are deleted, (4) abusive language is deleted. She submits that the certificate of CBFC is final. In the second affidavit, she stated that the police were given due intimation well in advance but they did not move in expeditiously, nor did they point out anything after seeing the film. She has enclosed the correspondence in that behalf. She submits that the decision of an expert body is final as far as the executive is concerned as laid down in **Union of India v. K.M. Shankarappa - (2001) 1 SCC 582**. Ms.Shah, therefore, submits that the petition should be dismissed so also the objections of the State Police. As observed by the Apex Court in Shankarappa - "Once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the State Government concerned to see that law and order is maintained" (para 8 of Shankarappa).

33. The film makers defending the petition divided themselves in two groups, viz.Mid-Day Multimedia Ltd., the newspaper company releasing the film and the

presenter of the film. They were represented by Mr.Aspi Chinoy, Senior Advocate whereas the producer and director were represented by Dr.Rajiv Dhawan, Senior Advocate. To begin with, Mr.Chinoy submitted that the film had already been issued the certificate by the Competent Authority and as held by the Apex Court in the case of **Ramesh v. Union of India** (supra), the decision of the Examining Committee must be given full weight. This view has been reiterated in **Shankarappa's case** (supra), namely that the views of the expert body have to be respected. Guideline No.(x) issued by the Central Government under section 5B(2) of the Cinematograph Act, 1952 (now renumbered as guideline No.(xviii)) required the Board of Film Certification to ensure that visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented. CBFC was aware of this requirement and still it has come to the conclusion that the film deserves a release though with "A" Certificate. The alleged ground of defamation or contempt of court cannot be thereafter permitted to be raised in a writ petition unless the decision of the expert body is arbitrary or perverse.

34. Mr.Chinoy then referred to the recent judgment of the Apex Court in the case of **Zee News v. Navjot Sandhu - 2003 (1) SCALE 113**. **That was a case** concerning

a telefilm about the attack on Indian Parliament on 13th December 2002. The trial in that prosecution was already over and the judgment, which was to be delivered on 11th December 2002, was postponed to 16th December 2002. In the meanwhile, this telefilm was sought to be released on 13th December 2002. The Apex Court observed that the telecast of the film was not for the purpose in any way to influence the mind of the judge, and further that the judges by their judicial training and the kind of office they hold are not expected to be influenced by such a broadcast of the film. Same view was expressed by the Apex court earlier in **R. Balkrishna Pillai v. State of Kerala - (2000) 7 SCC 129**. The Petitioner therein was convicted under prevention of Corruption Act and his appeal was pending before the High Court of Kerala. He had filed a petition seeking transfer of that appeal to a court outside Kerala. In para 9, the Apex Court observed that in this country there is complete separation of judiciary from the executive and judges are not influenced in any manner either by the propaganda or adverse publicity, and the cases are decided on the basis of the evidence available on record and the law applicable. The court, therefore, rejected the prayer for transfer. Mr.Chinoy submitted that in the instant case, the trial was over and only the judgment was awaited as in the case of Zee News and,

therefore, this court should not interfere at this stage.

35. With respect to the submission regarding the alleged contempt of court, Mr.Chinoy referred to the judgment of the Apex Court in the case of **Rizwan-ul-Hasan v. State of Uttar Pradesh - AIR 1953 SC 185**. In that matter, a letter was received from a political leader and it was forwarded by the District Magistrate to a Sub-Divisional Magistrate. The political leader was held guilty of contempt, but, as far as the District Magistrate and the Sub-Divisional Magistrate are concerned, the Apex Court held in para 10 that it was not possible to hold that any prejudice arose in the case by two applications being sent by the appellant to the Sub-Divisional Magistrate. Referring to the observation of Rankin, CJ. in **Anantlal Singh v. Alfred Henry Watson - AIR 1931 Calcutta 257**, the Apex Court observed that the jurisdiction in contempt is not to be invoked unless there is a real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Court’s action is a practical purpose and it is reasonably clear on the authorities that the Court will not exercise its jurisdiction upon a mere question of propriety.

36. Mr.Chinoy then referred to the judgment of the American Supreme Court in **Bridges v. California - 1941 U.S. Lexis 1084**. The American Supreme Court held in that matter that inherent tendency or reasonable tendency of a out-of-court publication to cause disrespect for the judiciary or interfere with the orderly administration of justice in a pending case is not sufficient to establish punishable contempt. The court held that free speech has to be permitted unless it is likely to bring about clear and present danger and serious evil was likely to be the effect thereof. He referred to the judgment of the Apex Court in the case of **Reliance Petrochemicals Ltd. v. Indian Express Newspapers - (1988) 4 SCC 592**. The Petitioner Company, with a view to arrange the capital to finance a petrochemical complex, had issued secured convertible debentures. Certain writ petitions and suits were filed in the High Courts challenging the grant of consent or sanction for the issue of debentures. In some of those proceedings, even injunctions were granted. The application for transfer of all those proceedings was pending before the Apex court. The Supreme Court had thereafter vacated the injunction orders. At that stage, the Respondent Newspapers had published an article claiming that the Controller of Capital Issues had not acted properly and legally in granting the

sanction to the issue for various reasons stated therein. The Petitioners, therefore, filed an application contending that the publication of article amounted to interference with the due course of justice and therefore contempt. Amongst others, reliance was placed on the judgment of the Apex Court in the case of **Re: P.C. Sen - AIR 1970 SC 1821**. The then Chief Minister of West Bengal had made a speech on All India Radio containing reflection on a pending proceeding in the Calcutta High Court concerning a government order. He had been held to be guilty for contempt. In the judgment in the case of Reliance (supra), the Apex Court referred to various cases including the American case in Bridges v. California (supra). It observed in para 12 that the judgment in P.C. Sen's case (supra) was not of much aid to the court inasmuch as the court was not dealing with the question of punitive action of committal for contempt of court. The court did not hold the articles to be offending and prejudicing the pending proceeding and therefore the petition was dismissed upholding the right of free speech and comment.

37. It was pointed out on behalf of the Respondents that the Indian courts continued to support free speech and referred to the American judgments from time to time. Reference was made to the judgment in the case of

S. Rangarajan v. P. Jagjivan Ram - (1989) 2 SCC 574. The film "Oru Oru Gramathile" (in one village) criticised Government's policy of reservation in government service. In para 45, the Apex Court held that - "Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression." Mr.Chinoy, therefore, submitted that in the instant case, since the matter was pending now for the judgment, the exercise of this freedom of expression by the film makers was not going to affect the determination by the court. In his submission, as observed in Razwan-ul-Hasan's case (supra), we are not so much concerned with propriety, but whether there was likelihood of any real prejudice, and in the absence of any such prejudice, no injunction could be granted on the ground of alleged contempt.

38. With respect to the submission based on defamation of the Petitioner and the other accused, Mr.Chinoy submitted that if the concerned publication was based upon the public records including the court records, the same cannot be termed objectionable. In

his submission, what was shown in the film was something from the public domain and was known to the world at large right from day one. Therefore, there was no question of any defamation being involved. He referred to the judgment in the case of **R. Rajgopal v. State of Tamilnadu - (1994) 6 SCC 632**. That matter was with respect to publication of autobiography of a condemned prisoner by Tamil weekly "Nakkheeran" published by the petitioner. The weekly was to publish the autobiography of one "Auto Shankar" who was sentenced to death for six murders. He had written his autobiography in jail which depicted the close nexus between the prisoner and several officers, some of whom were his partners in several crimes. The Inspector General of Prison instructed not to publish the autobiography and, therefore, a petition was filed to the Apex Court. The Apex Court held that since the publication was based on public records including the court records, it could not be injuncted. Government and its officers could not impose any prior restraint on the publication. Similar view has been taken by a single judge of this court in **Abdul Wahab Galadari v. Indian Express Newspapers (Bombay) Ltd. - AIR 1994 Bombay 69**. The court held that when the Defendants had raised the plea of justification and relied upon the evidence to substantiate the allegations against the Petitioner, the

injunction to prevent the publication could not be granted. In **Cadam v. Beaverbrook Newspapers Ltd. - 1959 (1) All England Reports 453, the newspaper had published a** statement that a writ claiming a huge amount of damages for alleged conspiracy to deprive a former company director of his interest in certain limited companies had been issued against the Plaintiff. In an action for damages, the newspaper sought to amend its defence by claiming that what they had printed was true in substance and what they had stated was derived from a writ. The court accepted the defence that the Defendants were not purporting to say that there was any substance in those charges. They were merely relying on the facts that the charges had been made. The amendment was left undisturbed. Mr.Chinoy submitted on similar footing that defamation could not be claimed to be a ground by the Petitioner to stop the release of the film inasmuch what was shown in the film was on the basis of the prosecution story. A film based on such factual aspect could not be injuncted.

39. Dr.Rajiv Dhawan, learned counsel appearing for the producer and director of the film, supplemented the submission of Mr.Chinoy both on theoretical aspect as well as on practical aspects. He submitted that while deciding the present controversy as to whether this

docudrama should be injuncted, we will have to answer the following questions. Firstly, what is the film about? What is the Petitioner's grievance? How is the balance to be struck between the freedom of speech and expression on the one hand and the rights of the Petitioner on the other and whether it is a trial by a film? Mr.Sebastian appearing for the Petitioner had submitted that we are concerned with the film as what it depicts and what are its consequences, as to whether it constitutes contempt of court in any way and defamation of the Petitioner. He had stated that the Petitioner was not concerned with the motive and had emphasised the observations of a Division Bench of the Madhya Pradesh High Court in the case of Smt. Padmavati Devi (supra), which are quoted earlier. Dr.Dhawan, on the other hand, submitted that we must as well look into the intention behind the film as it appears from it. The film must be seen as a whole without emphasising particular aspects as observed by the Apex Court in para 20 in **Bobby Art International v. Om Pal Singh - (1996) 4 SCC 1** concerning the film "Bandit Queen". He emphasised the fact that the film begins with a quotation of Gandhiji and ends with it, namely "Eye for eye makes the whole world blind". As the film unfolds, it does give the story of the bomb blasts, but he pointed out that the bomb blasts are in fact an aftermath to the demolition

of the Babri Masjid and the riots which took place thereafter in December 1992 and January 1993 in the city of Mumbai. In his view, the film points out as to how ordinary people, whose emotions are disturbed, become a ploy in the hands of criminals, how religion is used as a tool by such persons and as to how such a division in the society can lead to interference by individuals or countries enmical to India into its domestic affairs. In his submission, the film takes a sympathetic view with respect to the sufferings of minorities during the riots. He emphasised the sending of bangles by affected women to Dawood Ibrahim as depicted in the film and the conversation between Rakesh Maria and Badshah Khan where the police officer emphasises on the detenu as to how ordinary persons like him were becoming victims of religion’s propaganda. The film points out as to how conspiracies are hatched as a result of the combination of powerful instigators and innocent believers.

40. With respect to the grievances of the Petitioner, Dr.Dhawan submitted that undoubtedly the film shows planting of bomb at Hotel Centaur by the Petitioner, his involvement while driving a vehicle carrying the other criminals and planting bombs at various places in the city, his going to Dubai and Pakistan for training etc. However, his submission is

that these are known facts. This is not something which is being stated for the first time and such information has already appeared in various newspapers. As far as appropriate balance to be struck is concerned, Dr.Dhawan submitted that already two balancing acts have been done. Firstly, by the authorities of the Censor Board when they recommended certain cuts which were accepted and when a Disclaimer was printed at the beginning of the film that the event depicted in the film are based on the book "Black Friday" construed from the case of the prosecution and the narration should not be construed as an opinion on the innocence or guilt of the persons depicted. The second balancing act was done when in the TADA Court, the film makers agreed to delete the words "True Story" from the title of the film. Dr.Dhawan submitted that as a matter of third balancing act, the film makers were ready to give a further Possible Disclaimer which could be printed either at the beginning or during the interval or at the end of the film. The proposed Disclaimer was to the following effect:-

> "THIS FILM IS BASED ON PUBLIC RECORDS IN THE PUBLIC DOMAIN.
>
> IT IS MADE CLEAR THAT

. THE ACCUSED TOTALLY DENY THEIR INVOLVEMENT IN THE CRIMES DEPICTED IN THE FILM.

. THE POLICE TOTALLY DENY THE DEPICTION OF POLICE BRUTALITY.

ALL ACCUSED ARE INNOCENT UNTIL PROVEN GUILTY BY A COURT OF LAW."

He, therefore, submitted that if the apprehensions of the Petitioner were thus taken care of, there was no need for any intervention. Lastly, with respect to the question as to whether this was a trial by a film, Dr.Dhawan submitted that it was undoubtedly not. It was only a docudrama to tell the story as understood by the prosecution though with certain creative license. There was no intention to interfere with the judicial process. In fact, the film ends when the Police Commissioner Mr.Samra announces that the charge-sheet is filed and a senior lawyer is appointed as a prosecutor. In this connection, however, he submitted that on facts was there any doubt that the Petitioner and so many others were accused in the case and also that there were allegations against them of planting bombs and having a connection with ISI? Thus, on the one hand, he

submitted that this was not a trial by film, but on the other hand, he submitted that there was a factual justification and basis to the making of the film. In his submission, people have a right to know what happened to the city on the fateful day and it is an accurate but respectful depiction of the events.

41. With respect to the submission of Mr.Sebastian that Article 21 was on a higher pedestal as against Article 19, Dr.Dhawan submitted that in para 64 of **Bank Nationalization case (R.C. Cooper v. Union of India - AIR 1970 SC 564)**, the Apex Court has observed as follows:-

> "In our judgment, the assumption in A.K. Gopalan's case that certain Articles in the Constitution exclusively deal with specific matters and in determining whether there is an infringement of the individual's guaranteed rights, the object and form of the State action alone needs to be considered and effect of the laws on fundamental rights of the individuals in general, will be ignored, cannot be accepted as correct."

He further pointed out that the judgment in the case of

Maneka Gandhi v. Union of India - (1978) 1 SCC 248 consolidated the view that all Articles in the Fundamental Rights chapter are to be read together and subject to reasonableness. On the submission that the exercise of freedom of expression as in this film affects the fair trial and freedom of life and liberty under Article 21, Dr.Dhawan submitted that the Apex Court had observed in **Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana - (1988) 3 SCC 410**, that freedom of expression is a preferred right which is always very jealously guarded. That was in the context of a TV serial "Honi-Anhoni", against which it was contended that it was likely to spread false or blind beliefs and superstitions. Even in the case of a film like that, the freedom of expression was protected. Then he emphasised the following paragraph from **S. Rangarajan v. P. Jagjivan Ram - (1989) 2 SCC 574**:-

> "There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest

> is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg'."

Dr.Dhawan submitted that the film was not expected to endanger the interest of the community and, in any case, it was the responsibility of the State to maintain law and order as observed by the Apex Court in the same judgment as well as in **Shankarappa** (supra). The police cannot make a grievance on that count. He submitted that the film makers were not making any comment on the prosecution as in **Padmavati Devi's case** (supra). In **Bankim Chandra's case** (supra), the press report had asked for cancellation of bail of the Petitioner. Such was not the situation here.

42. With respect to the submissions of the State Government, namely that the police were shown in bad light, Dr.Dhawan submitted that it has clearly come on record that the police were informed by the Censor Board well in time about the film. They did not care to

remain present when they were invited for the preview of the film. Whatever may be their difficulties, they saw the film later and even subsequently did not lodge any protest whatsoever. The police cannot be permitted to raise these objections in the present matter. Dr.Dhawan referred to the reports made by Amnesty International and other organisations to the Government of India which recorded torture of various prisoners during investigation into bomb blasts including that of Imtiaz Yunus whose thumb impression was shown to have been forcibly taken in the film. In his submission, it cannot lie in the mouth of the police and, in any case, as observed by the Apex Court in **R. Rajgopal v. State of Tamilnadu (supra),** if the officers are depicted while discharging their public duties and if they have any objection, they cannot make a grievance about the same. He submitted that although the Petitioner was making a grievance about the contempt, the language used by the Petitioner in para 8 of the petition itself was contemptuous. He submitted that this was an open trial and not in camera. A number of such trials have been reported in the newspapers including various Commissions of Enquiry. Merely because the matter was subjudice, a gagging writ could not be issued. He relied upon the observations of the Apex Court in **LIC v. Manubhai Shah - (1992) 3 SCC 637** and particularly para 19 and 24

thereof in the context of documentary "Beyond Genocide" based on the Bhopal Gas Disaster.

43. Dr.Dhawan pointed out that large number of films have been made on such riots. Thus, for example, on the demolition of Babri Masjid and Bombay Riots itself, films were made by Mr.Anand Patwardhan, namely "Ram Ke Naam" and "Father, Son and Holy War". "Final Solution" and "Aakrosh" were the films by Rakesh Sharma and Ramesh Pimple on the Gujarat riots and incident at Godhra. As far as the attack on the Parliament is concerned, there was a telefilm "December 13 Parliament Attack" by Naveen Kumar. On the 1984 Sikh riots, there was a film "My Mother India". Similar films were made outside India also and amongst others he mentioned a film on O.J. Simpson Trial in United States. He submitted that large number of Indian television serials dealt with ongoing criminal investigations. As far as the present case is concerned, he referred us to a large number of press cuttings right from the arrest of the first accused, i.e. Asgar Mukadam. Thereafter the statement of the Home Minister Shri S.B. Chavan that Dawood Ibrahim was involved in this case. Thereafter about the interrogation by CBI of one Yaqub Memon, brother of Tiger Memon, who was arrested subsequently in New Delhi. He also drew our attention to the fact that Srikrishna

Commission submitted its report giving details of conspiracy and noting the prime role of Tiger Memon. He, therefore, submitted that there was nothing unknown to the people earlier which was now being shown in the film and, therefore, there was no reason to grant any injunction.

44. Dr.Dhawan submitted that justice should no longer be considered as a cloistered deity and should be prepared to permit discussion or comments in society at large on current events even if any trial concerning them is pending in court. He referred to the judgment of the Chancery Division in the case of **Bunn v. British Broadcasting Corporation - (1998) 3 All England Law Reports 552** in this behalf. In that matter, the Plaintiff, Robert Bunn, had applied for injunction against the BBC and against the 2nd Defendant (the author of a book) restraining them from disclosing in a television programme and a book written by the 2nd Defendant any material disclosed by the Plaintiff during an interview he had given to the City of London Police. That interview contained some admissions made by him. He was facing a trial. It was held that the obligation of confidentiality regarding the contents of the statement was at an end since the contents were already in the public domain. The injunction was therefore

declined.

45. Dr.Dhawan submitted that what was necessary was to find a balance between the requirement of fair trial and the freedom of expression which was also correlated to the right to know of the citizens. He submitted that such a balance can be obtained by giving appropriate direction. He relied upon a Canadian judgment (per Lamer, CJ.) in **Dagenais v. Canadian Broadcasting Corporation - (1994) 3 SCR 835**. While considering whether a docudrama should be aired in the context of fair trial provisions, the learned Judges had observed that a balance has to be struck between the requirement of a fair trial and that of free expression and the balance should be struck to see to it that there is a proportionality. Dr.Dhawan emphasised the following quotation from the judgment:-

> "A publication ban should only be ordered when:
>
> a. such a ban is necessary in order to prevent a substantial risk to the fairness of the trial, because reasonably available alternatives measures will not prevent the risk; and
> b. the salutary effects of the publication

> outweigh the deleterious effects to the free expressions of those affected by the ban.
>
> ... To assess the validity of the order in the case at bar, it is necessary to consider the objectives of the order, to examine the availability of reasonable alternative measures, that could achieve this objective and to consider whether the salutary effects of the publication ban outweigh the deleterious impact the ban has on freedom of expression."

He, therefore, submitted that the Respondents were agreeable for appropriate corrective disclaimer, but in no case the relief as sought for should be granted.

46. We have considered the submissions of all the parties carefully. As observed by the Constitutional Bench way back in para 27 of **K.A. Abbas v. Union of India** (supra), the restrictions on freedom of expression, except on cinema, are getting reduced. Freedom of expression is related to right to know as well. When it comes to cinema also, basically the trend is to give as much freedom as is possible.

Although the Constitutional Bench has not accepted the extreme proposition in favour of freedom of speech and expression in all circumstances as in the U.S.A. unless there is a real danger to society, yet in a very large number of cases, cinema makers have been permitted to portray what they wanted to. In **R. Rajgopal v. State of Tamilnadu** (supra), the Apex Court observed in the context of right to privacy that it is implicit in the right to life and liberty guaranteed by Article 21. After summarising the broad principles in a conflict between this right and freedom of speech and expression in Article 19(1)(a), the Court observed in para 27 that these principles are not exhaustive.

> "As rightly pointed out by Mathew J., this right has to go through a case-by-case development. The concepts dealt with herein are still in the process of evolution."

47. In the present matter, we are concerned with the question of freedom of speech and expression of maker of a docudrama as against the likely effect thereof on a pending court matter where the judgment is awaited. As against this right of the film maker, we have to concern ourselves with the right of an

accused for a fair trial and as to whether the docudrama affects this right or whether it amounts to contempt of court. The survey of various cases relied upon by counsel for all the parties informs us as to how different cases came to be decided from time to time involving publications in newspapers, telefilms, teleserials, documentaries and films. With respect to the right of third parties to comment on pending court proceedings, either by making a speech or writing in newspapers, it was submitted on behalf of the film makers that such publications are no longer frowned upon. As noted above, in **Reliance Petrochemicals v. Indian Express Newspapers (supra),** articles in the newspapers were permitted although it was contended that they would have an impact on the court proceedings and the gagging order as sought was not granted. It is, however, material to note that in his judgment, Sabyasachi Mukharji J. (as His Lordship then was) referred to the American judgments on this issue. He noted with approval the proposition in **Whitney v. California** (supra) that there must be a reasonable ground to believe that the danger apprehended is real and imminent. Thereafter he observed as follows in para 37:-

"Having regard, however, to different aspects

> of law and the ratio of the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the issue is not going to affect the general public or public life nor any jury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of press to keep informed, that the injunction should not continue any further."

48. It was submitted on behalf of the Respondents that the judgment in **Re: P.C. Sen** (supra) is no longer good law. However, from what is reproduced above, it is difficult to say so. The said judgment was referred by Sabyasachi Mukharji J. in para 11 and 12 of this judgment and then it was observed that as the court was not dealing with the case of a punitive action of committal for contempt of court for the

publication pending trial, the decision in P.C. Sen's case in view of the facts involved was not of much aid in that matter. Ranganathan J., who wrote a separate judgment, also concurred on facts in para 46 that the danger apprehended by the Petitioner Company was not so real or substantial as to warrant the continuance of the injunction order passed by the Apex Court earlier. In Re: P.C. Sen, first a Single Judge of the Calcutta High court (Binayak Nath Banerjee J.) held the Chief Minister of West Bengal guilty of contempt in making a speech on All India Ratio which contained comments on a pending proceeding in the High Court concerning a government order. The learned Single judge declined to accept the extreme proposition that judges are never influenced or impressed by extraneous publication. He held that the prejudicial publication concerning a pending proceeding may amount to contempt and is a risky business though a trained mind of the judge is likely to ignore such extraneous matters. In para 16 of the judgment reported in **AIR 1966 Calcutta 411**, the learned Judge reminded himself of what Justice Cardozo had observed:

> "I need remind myself of what Cardozo, the great American Judge, said in his treatise on

> the Nature of the Judicial Process (1921) at p. 168. He did not doubt the grandeur of the conception which lifts (Judges) into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. But then he said, "Nonetheless, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the Judges by."

In the appeal decided by the Apex Court in **Re:P.C. Sen - AIR 1970 SC 1821**, the Court did hold in para 8 that "speeches or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal, is a grave contempt." The judgments of various High Courts cited by Mr.Sebastian, i.e. those of Calcutta High Court (Bankim Chandra Paira’s case - supra), of Madhya

Pradesh High Court (Padmavati Devi's case - supra) and of Nagpur High Court (Wasudeoraoji Sheorey's case - supra) are to the same effect. If any judgment on the recent trend in this behalf is required, in the case of **M.P. Lohia v. State of West Bengal - 2005 AIR SCW 767**, the Apex Court has expressed once again to the same effect. That was a case wherein a young wife had committed suicide in her parents' home within two years of the marriage. Her parents made allegations of demand of dowry being the cause of suicide. As against this, the plea of her in-laws was that she was suffering from mental illness. They had applied for anticipatory bail and the matter was subjudice. An article "Doomed by Dowry" appeared in a magazine based on interview of the family of the deceased giving their version. The facts narrated therein contained a material that could be used in forthcoming trial of that case. The Apex Court observed that the article in the media did amount to interference with the administration of justice. In para 10 of the judgment, the Court observed as follows:-

> "We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against any such trial by media when the issue is

subjudice."

49. It is true that the Apex Court did allow the publication of the autobiography of a condemned prisoner in **R. Rajgopal v. State of Tamilnadu** (supra). However, it must be noted that it was not a case involving interference in the administration of justice by virtue of the publication. Similarly, the teleserials "Tamas" (**Ramesh v. Union of India** - supra) and "Honi-Anhoni" (**Odysee Communication's case** - supra) essentially involve the right of speech and expression of the film makers. There was no conflict with the right of any accused facing a trial. So is the case with respect to the documentary "Tale of Four Cities" (**K.A. Abbas v. Union of India** - supra). Mr.Sebastian submitted that even in the documentaries made by Mr.Anand Patwardhan such as "Father, Son and Holy War" and "Ram Ke Naam", there was no particular accused depicted facing a trial in a prosecution. The only relevant case, which is relied upon by the film makers, is concerning the attack on Indian Parliament on 13th December 2002 (**Zee News v. Navjot Sandhu** - Supra). That was a telefilm to be shown on the T.V. It was a case where the trial was arleady over and the judgment was awaited which was postponed to 16th December 2002 from 11th December 2002. The telefilm

was sought to be shown on 13th December 2002. It was in that context that the Apex Court observed that the telecast was not for the purpose in any way to influence the mind of the judge and that the judges by their judicial training and the kind of office they hold are not expected to be influenced by such a broadcast of the film.

50. The aforesaid observation of the Apex Court is undoubtedly to be respected as an expression of opinion with respect to the expectations from the judges. However, what is to be noted is that the telefilm was to be shown on television on a day and undoubtedly large number of people would see the same. However, could the effect thereof be compared with that of a cinema of over 3 hours running over a number of days in different cinema houses throughout the country? A judge undoubtedly is not expected to be influenced. At the same time, we must also note the observation of the Single Judge of the Calcutta High Court in **Re: P.C. Sen** (supra), viz. that the extreme proposition that the judges are never influenced or impressed by the extraneous publication is difficult to be accepted. It is true that the film does not tell the judge as to how he should decide the matter. At the same time, the fact remains that it

shows a large number of persons who are accused in the case as criminals. Will this depiction of the accused, discussion on the film thereafter and the comments of the public at large have no influence at all? In spite of this depiction if the Petitioner and other accused are acquitted, will it not lead to comments on the judge and will it not be a factor which may weigh on his mind? Does this not amount to prejudicing the mankind against the persons concerned before the cause is heard as observed in **St. James's Evening case** (supra)? Again, as observed in the same case, by quoting Lawrence CJ. in **People v. Wilson - (1872) 16 Am Rep. 528** that a court will, of course, endeavour to remain wholly uninfluenced by publications like that under consideration; but will the community believe that it is able to do so? A disturbing element has been thrown into the determination, which it would be the wise policy of the law to exclude.

51. As observed in the judgment of the Constitution Bench in K.A. Abbas (supra), the legal position with respect to freedom of speech and expression is different in India than the one in U.S.A. Reasonable restrictions are permissible and, therefore, section 5B(1) of the Cinematograph Act

contains the same restrictions as in Article 19(2) of the Constitution of India. Contempt of court is contemplated as a factor to be examined before certifying the film. Mr.Sebastian has submitted that inasmuch as the film is based on the book "Black Friday" and also inasmuch as the book acknowledges the assistance and support of the learned Judge, it scandalises or lowers the authority of the judge. The film makers also accept that the film is based on the book though in the film nothing is shown or stated about the judge or about the court and in fact the film ends by informing the viewers that the charge-sheet has been filed in the Trial court and nothing thereafter. In this view of the matter, perhaps there could be a debate as to whether the release of the film before the judgment would amount to scandalising or lowering the authority of the court. But when it comes to the second and third clause of the definition of "criminal contempt", in a broad sense it will have to be accepted that it prejudices and, in any case, tends to interfere with the due course of judicial proceeding. It also thereby interferes and, in any case, tends to interfere with the administration of justice. The first objection of the Petitioner will, therefore, have to be held as sustainable.

52. As far as the second objection of the Petitioner, namely that it defames him, is concerned, there is no difficulty in noting that he has been shown in the film as planting the bomb in a suitcase at Hotel Centaur. he has been shown as driving the vehicle wherein various alleged criminals involved in the case were travelling and then throwing the detonator at Prabhadevi. He has been shown as going to Dubai and then to Pakistan in the proposed conspiracy. He along with other accused are called terrorists, jehadis and ISI agents. Although the evidence has been completed in the trial, the judgment is yet awaited. Mr.Sebastian submitted that the case of the Petitioner is that he is innocent and has been involved and framed in this case. It is his further case that there is no direct evidence of his involvement and most of the case of the prosecution is on circumstantial evidence. Is he, therefore, not entitled to submit that he is being defamed by his depiction in the film? The film is not a fictional one. It is based on the book which is written after good amount of research and on the basis of the information made available by the prosecution. Undoubtedly, the disclaimer at the beginning of the film does declare that the film is based on this book,

it is true to the book and is constructed from the case of the prosecution though certain creative license has been taken. The disclaimer undoubtedly says that the narration should not be construed to mean an opinion on the innocence or guilt of the persons depicted. As noted earlier, Dr.Dhawan has offered to print one more disclaimer in the film that the accused deny their involvement in the crime and so also the police and that they are innocent until proven guilty.

53. In this connection, it is material to observe that the film is made in Hindi and will be seen in several cinema houses all over the country. The disclaimer is printed in English and not many people will read it nor will they be impressed by it after seeing the film. It is a strong and a heavy film. It undoubtedly creates an impact on the viewers. Is it not likely that in spite of these disclaimers the impression that the viewers will carry will be that the Petitioner and all the persons concerned are the perpetrators of the crime? Does it, therefore, not amount to their defamation? Mr.Sebastian, therefore, rightly submitted that one has to look at all this depiction in the film from the point of view of the accused who is in jail for last over 12 years. No

amount of disclaimer will wash away the impression that will be created with respect to his involvement as shown in the film though, in his submission, he is totally innocent.

54. Dr.Dhawan submitted that the film takes a sympathetic view of the impact on the minorities after the demolition of the Babri Masjid and the riots in Mumbai. This is one way of looking at the film but, as stated by Mr.Sebastian, that is not necessarily the only impact which is likely on every viewer. A large part of the film is devoted to the planning of the bomb blasts and then the investigation of the crime. It is at the end of the film that the demolition of the Babri Masjid is shown though it is shown as an explanation of the persons involved in the blasts for whatever that they have done. It is equally possible that the impact of the film could be different depending upon the attitude and background of the viewers. It is equally possible that the minorities may feel, as submitted by the learned Advocate General, that the police were against them and so also was the majority community, whereas the impact on the majority community could be the other way round, namely the minute planning and execution of the bomb blasts could get engraved in their mind. The

intention of the film maker is not something with which we should concern ourselves nor should we concern ourselves so much with the apprehensions expressed by the learned Advocate General. It is true that there could be a damaging impact and perhaps on the law and order as feared by him. But, as observed by the Apex Court in **Shankarappa's case** (supra) and **Rangarajan's case** (supra) that the responsibility is of the police to maintain law and order. In any case, the police cannot claim any credit in view of the casual manner in which they have reacted to the film at the relevant time. They did not care to see the film promptly when they were called for preview though they knew that the film was concerning the bomb blasts. They did not lodge any protest whatsoever even after viewing the film. It is true that, as submitted by the learned Advocate General, the viewers are bound to feel that the police are shown in bad light and it is shown that they have committed excesses. However, we are not concerned with their grievances in the present petition. We are concerned with the grievance of the Petitioner, namely that the film defames him. There is, however, one more aspect of the matter, namely that though the extreme American propositions are not accepted in India, even if we apply the test laid down in **Whitney v. California**

(supra), namely that there should be a reasonable ground to believe that the danger apprehended is real and imminent, in our view, this is a fit case to come to that conclusion. The Petitioner is seeking only the restraint on the release of the film until the judgment is delivered. Judgment is expected in near future. Release of the film in the meanwhile will, as observed above, throw a disturbing element in the determination. It will also undoubtedly defame the Petitioner and the persons concerned, no matter whatever may be the disclaimer already printed or now proposed.

55. As noted earlier, the trial which is pending its decision, has more than 189 accused. Out of them, 145 are in custody for last over 12 years. More than 250 people were killed in the bomb blasts and more than 700 got injured. It is a major episode in the history of the city. Release of the film based on such an episode is bound to have an impact of its own. We are presently concerned with the prejudicial impact feared by the Petitioner visa vis a fair trial and his reputation. It was submitted by Dr.Dhawan that most of the happenings have been reported in the press right from the arrest of the first accused, i.e. Asgar Mukadam. At the same time, what is to be noted

is that 12 long years have gone after the blasts and by now most of the people merely remember that such blasts did take place and a large number of persons died. Apart from the relatives of the deceased or injured in the bomb blasts or of the accused, not many people would remember that one Asgar Mukadam was the first person to be arrested or the present Petitioner was one who planted the bomb at Hotel Centaur as claimed. All these depictions will bring back the memories of those blasts once again to the people. By now, as stated above, most of the people, in all probability, remember at the most that these blasts were engineered by one Tiger Memon in association with Dawood Ibrahim as claimed. Hardly anybody would know that one Mushtaq Tarani was involved in these blasts. Now this film will inform the viewers once again about the involvement of the Petitioner and so many others in these operations. In our view, any amount of disclaimer cannot take away the damaging effect and the defamation that would be caused particularly if the Petitioner and a number of accused in the trial are ultimately released either as totally innocent persons or even by getting a benefit of doubt.

56. The Censor Board has framed guidelines. These guidelines are framed under section 5B(2) of the

Cinematography Act. One of the guiding factors is that visuals or words "involving defamation of an Individual or Body of Individual or contempt of court are not presented. These guidelines ensure that nothing should be permitted which amounts to interfering with the administration of justice. It is not as if the Censor Board has to be satisfied that visuals or scenes have in fact interfered with or obstructed the course of justice or have adverse effect thereon. In other words, it is not as if the matter has to be decided by the Censor Board on the touch stone of Law of Contempt. Similarly, "defamation" as contemplated by the guidelines should not be construed as committing of tort of defamation as understood in law. Broadly, these guidelines are for the purposes of giving effect to the well settled principle that every right has a corresponding duty or obligation.

57. Therefore "Contempt" as understood by the guidelines means any visual or word interfering with administration of justice. The word "defamation" as understood by the guidelines means attacking the reputation of or speaking ill of somebody. Therefore, although petitioner bases his case on contempt as understood by Contempt of Courts Act and defamation as

is generally understood by law, we must examine his case with regard to the guidelines which guide the Censor Board while deciding to certify a film. Broad guidelines enunciated by Section 5B(1) and specific directions which set out the principles to guide the authority competent to grant certificate for public exhibition under the Cinematographic Act will have to be placed in the forefront in the present matter. It is in this light that we have to examine the contentions of both sides. If despite certification by the Censor Board, we are satisfied that the film is violating the mandate of Section 5B as well as the directions issued thereunder, then nothing prevents us from exercising our powers to issue prerogative writs and restrain exhibition of the film. In any event, the request of petitioner is not to grant a blanket restraint on the exhibition of the film but stop its public exhibition till such time as the judgment of the Designated Court is delivered.

58. In this petition, the real issue is whether the citizen’s right of free speech and expression will prevail over the right of an accused like petitioner of a fair and impartial trial. Fair and impartial trial is not just part and parcel of right to Life and Liberty but goes to the root of administration of

justice and Rule of law. It is well settled and been included in the European Convention of Protection of Human Rights and Fundamental Freedom that exercise of right of free speech and expression carries with it duties and responsibilities and one such duty and responsibility is that exercise of such right must not take away the protection of reputation or rights of others. Similarly when it comes to maintaining authority and impartiality of judiciary, necessary curbs and restraints will have to be placed on the exercise of an individual's right to freedom of speech and expression.

59. In the case of **Life Insurance Corporation of India Vs. Manubhai Shah - AIR 1993 SC 171**, the Supreme Court has succinctly summarised the freedom of speech and expression, guaranteed by Article 19(1)(a) of the Constitution of India to the citizens. Para 22 of this decision reads as follows:-

> 22. Every right has a corresponding duty or obligation and so has the fundamental right of speech and expression. The freedom conferred by Article 19(1)(a) is, therefore, not absolute as perhaps in the case of the U.S. First Amendment; it carries with it

certain responsibilities towards fellow citizens and society at large. A citizen who exercises this right must remain conscious that his fellow citizen too has a similar right. Therefore, the right must be so exercised as not to come in direct conflict with the right of another citizen. It must, therefore, be so exercised as not to jeopardise the right of another or clash with the paramount interest of the State or the community at large. In India, therefore, our Constitution recognises the need to place reasonable restriction on grounds specified by Article 19(2) and S.5B of the Act on the exercise of the right of speech and expression. It is for this reason that this Court has recognised the need for prior restraint and our laws have assigned a specific role to the censors as such is the need in a rapidly changing societal structure. But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19(1)(a), such restrictions are bound to be viewed as anathema, in that, they are in the nature of

> curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them. The burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law."

60. In the present case, however, we have not gone into the validity and legality of the grant of certificate by the Censor Board, since that is not the relief sought by the Petitioner. While considering the prayer for restraint, however, it is necessary that the above principles are borne in mind. Once the guidelines and directions are clear, then, even without seeking the relief of quashing the certificate, the Petitioner can pray for suspension of the screening and exhibition of this film if he makes out a case of breach thereof. In judicial review, it is open for us to consider such a request. This aspect is not disputed. Once the dignity of an individual and the Petitioner’s right to fair trial and the impartiality of administration of justice are the issues involved, then wording of the prayer becomes less material. One more disclaimer by way of

a further balancing act, as suggested by Dr.Dhawan, will not change the scenario. It is clear that vital issues of fair trial and dignity of an individual are ignored by the Authorities. Hence, the relief can be granted as sought. The petitioner-accused standing trial before the Special Court has challenged the decision to permit exhibition of the film in question. The petitioner accused submits that the matter is reserved for judgement before the Designated Court and till such time as the verdict is not pronounced, exhibition of this film would have an adverse impact on the ongoing trial. He states that nobody has a right to pronounce a verdict much less verdict of guilt or otherwise upon an accused and that is the sole prerogative of a Criminal Court. Trial by media and press is strictly prohibited. The film in question has taken upon itself the task of bringing to the viewers' notice the conspiracy in details. It is authentic as we are informed that it is based on indepth study and research. The film is based upon prosecution story. There is obviously an other side to the whole episode. Whether that other version should be accepted or not is something which the Designated Court has to decide. Therefore, under the garb of making a film based on prosecution story and furnishing all details therein, it is not open for the

respondents concerned to present a picture which would virtually pronounce the petitioner and others guilty. The details as set out are bound to create an impression against the accused in the minds of viewing public as cinema is a powerful and effective medium of expression. It reaches a large section of public. Presently, films are not only exhibited in theatres but are also transmitted and relayed through satellite to T.V. sets installed at virtually every home. Therefore, petitioner apprehends that people at large would definitely form an opinion about his guilt. The verdict having yet to be pronounced by the Designated Court, permission to exhibit the film at this stage would definitely affect the course of justice. It is irrelevant and immaterial whether the Judge is actually prejudiced or influenced by the film.

61. The above legal position is well settled. The decision of the Supreme Court in the case of Re: P.C.Sen followed by learned Single Judges of the Allahabad High Court is eloquent enough in this context. The Allahabad High Court in **Lakhan Singh v. Balbir Singh - AIR 1953 Allahabad 342 (D.B.)** has observed thus:-

7. Administration of justice by an

impartial judiciary is the basis of our system of jurisprudence and indeed of the jurisprudence of any civilised State. It is the concern not merely of immediate litigants. Its assurance is every one's concern. The method of administering justice prevalent in our courts is that a conclusion to be reached in a case will be induced only by evidence and argument in open court and not by outside influence whether of private talk or public print. To quote the words of Frankfurter J, and the other dissenting Judges in Bridges Vs. California (1941) 86 LAW Ed. 192 at p.214,

> *"A trial is not a free trade in ideas, nor is the best test of truth in a courtroom 'the power of the thought to get itself accepted in the competition of the market"*
> Comment, however, forthright, is one thing. Identification with respect to specific matters still in judicial suspense is quite another.

8. .....

9. Holmes, J. laid down in Patterson V. Colorado (1907) 205 U.S. 454 at P.463: 51

Law Ed. 879, that:-

> *When a case is finished, Courts are subject to the criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."*

62. One cannot forget the importance of administration of justice by an impartial judiciary. As early as in 1952 it was noticed by the learned Judges presiding over the Division Bench of Allahabad High Court that conditions in India are different from those prevailing in America. A Learned Judge of this Court in the case of **Demitai Gengji Sojpal Vs. Rawji Sojpal and Ors. - AIR 1937 Bombay 305** has also held attached considerable significance to this aspect by observing that it would be disastrous for due and proper administration of justice if in a suit pending investigation in a court of law that investigation was to be taken out of the hands of the Court and practically left to the Press. It is necessary to ensure that every litigant in court of justice has a fair and unprejudiced hearing at the trial on the merits of his case. The submissions of Mr.Dhavan and Mr.Chinoy, unfortunately do not notice this aspect.

63. In the case of **Dr.D.C.Saxena Vs. Hon'ble the**

Chief Justice of India - AIR 1996 SC 2481 the Supreme Court has said that any citizen is entitled to express his honest opinion about the correctness of the judgement, order or sentence with dignified and moderate language pointing out even an error or defect or illegality in the same but such an event is post mortem.

64. In the case of **Hutchison and Ors., Ex parte McMAHON, reported in (1936) ALL ENGLAND LAW REPORTS ANNOTATED (VOL.2) 1514**, the King's Bench has observed thus:-

> "Proprietors of cinemas and distributors of films must realise that, if they want to produce these sensational films, they must take care in describing them not to use any language likely to bring about any derangement in the carriage of justice."

65. Grant of injunction or restraint order is not a gagging writ in the facts of this case. The Petitioner has made out a strong prima-facie case inasmuch as fair trial, which is part of Rule of Law and Administration of Justice, is an aspect which must prevail over individual's right of free speech and

expression. People's right to know cannot be stretched to such an extent as would make mockery of Rule of Law. Petitioner's right to fair and impartial trial must outweigh all such previleges and expectations. The balance of convenience is definitely in favour of an injunction inasmuch as the restraint against exhibition is for limited duration and the Petitioner's right as above as well as public interest is in favour of such restraint. The Respondents have a commercial and business interest which is secondary. The loss to the Petitioner's dignity and reputation is enormous. It would be irreparable as the viewers may form an opinion about his guilt.

66. Before we conclude, we cannot but observe that this trial is one of those important trials even in terms of history and in terms of reconciliation of people. If the people have to have a belief in truth and justice as abiding values having a primacy over force and violence, it is just and necessary that justice must not merely be done but must also appear to have been done. If a society wants to do justice and thereby have peace and stability, then the stream of justice has got to be maintained clean to the extent possible. It is equally essential that the

dignity of any individual, even though he may be an accused, has to be maintained as far as it could be. Looking at it from this point of view as well, we cannot but hold that the release of the film will have a prejudicial effect on fair administration of justice as well as on the image of the accused. We, therefore, hold that the Petitioner has made out a case for the injunction that he has sought on the ground that the release of the film would constitute contempt of court and his defamation.

67. In the circumstances, we allow this petition to the extent as prayed in the petition, namely that the film shall not be released, screened and exhibited until the judgment in TADA Case BBC 1 of 1993 is delivered. Rule is accordingly made absolute though without any order as to costs.

(H.L. GOKHALE)

(S.C. DHARMADHIKARI)